

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

M S INTERNATIONAL, INC., an
Indiana corporation,

Plaintiff,

vs.

KIVA STONE LLC, an Illinois
Limited Liability Company; and DOES
1 through 10, inclusive,

Defendant.

Case No.: 3:22-cv-01296-S

AFFIDAVIT OF RONALD P. OINES

I, Ronald Oines, declare as follows:

1. I am a partner of Rutan & Tucker LLP and one of the attorneys of record for Plaintiff M S International, Inc. (“MSI”) in this suit. I am a member in good standing of the State Bar of California and am admitted *pro hac vice* to this Court. I have personal knowledge of the facts set forth in this Affidavit and, if called as a witness, could and would testify competently to such facts under oath.

2. On February 10, 2023, the Court entered an Order requiring Kiva Stone LLC (“Kiva”) to pay MSI’s reasonable attorneys’ fees incurred in obtaining an entry of default and in responding to Kiva’s motion to set aside the default.

(ECF No. 24, pg. 11.) As required by the Court's Order, on February 16, 2023, MSI submitted an invoice, along with an affidavit and detailed billing statements to Kiva's counsel, all of which are attached as **Exhibit 1** hereto.

3. The affidavit and detailed billing statements show the work done, which included gathering the facts for and preparing the request for entry of default, declaration in support thereof, and proposed order thereon in compliance with applicable rules; analyzing Kiva's motion to set aside the default; preparing a brief in opposition to Kiva's motion to set aside the default, as well as a declaration with evidence in support of the opposition; researching, analyzing and summarizing several cases to support the opposition; and analyzing and distinguishing the cases cited by Kiva. Additionally, MSI's co-counsel in Texas assisted in finalizing the documents and confirming that they comply with all local rules and practices. The total number of hours invoiced for all of the work was 20.5. The total amount invoiced is \$12,847.00.

4. In its Order denying Kiva's Motion for Entry of a Briefing Schedule (ECF No. 28), the Court indicated that I could submit an affidavit to support the billing rates reflected in the invoice to Kiva. The comments below are limited to the issue of hourly billing rates, although MSI would be happy to respond to the other issues raised in Kiva's Motion for Entry of a Briefing Schedule if the Court wishes.

5. My normal hourly rate, and the rate at which MSI was invoiced for the work performed set forth in the invoice and billing statements is \$690. I have been practicing law, mostly in California, for more than 33 years, although I was previously admitted in Texas, and previously have been admitted *pro hac vice* in district courts in Texas. My practice has focused and continues to focus on intellectual property litigation. I am generally familiar with the rates charged by intellectual property litigators based in Southern California, and based thereon, understand that \$690 an hour for an intellectual property litigator with 33 years' experience is on the low side, particularly for a firm the size of ours (approximately 140 attorneys). I understand, however, that the Court will likely consider the invoice in this case in light of reasonable rates in Texas and, in particular, the Northern District of Texas.

6. Our co-counsel in Dallas, Jennifer Rynell, who also focuses on intellectual property litigation, has informed me that, based on her experience and knowledge of hourly rates in Texas and Dallas in particular, my hourly rate of \$690 is reasonable. I am also familiar with fairly recent cases in which rates ranging from \$545 to over \$700 per hour were found to be reasonable by district courts in Texas. See *Protradenent LLC v. Predictive Profiles, Inc.*, 2022 WL 2078032 (W.D. Tex. 2022)(\$545 per hour reasonable for intellectual property attorney); *R.A. Guthrie Company, Inc. v. Boparai*, 2021 WL 1148957 (E.D. Tex.

2021)(\$575 per hour in 2019 reasonable for intellectual property attorney);

Chevron Intellectual Property LLC v. Sariel Petroleum LLC, 2020 WL 12442010

(S.D. Tex. 2020)(Court approved hourly rates of more than \$700).

7. To be clear, the rate charged for all of my time that was included in the invoice and billing statements to Kiva was \$690. There are no “internal inconsistencies” in the billing statements, as alleged by Kiva in its Motion for Entry of a Briefing Schedule (ECF No. 26). As explained in the Affidavit sent to Kiva and further explained to counsel for Kiva in a telephone conversation, time entries describing work that was not directly related to seeking entry of default and opposing Kiva’s motion to set aside default were removed from the billing entries and the time related to that work was not included in the invoice to Kiva. So although the *daily* “Billed Amount” includes the total amount MSI was billed, the invoice to Kiva only includes time for amounts that relate to seeking entry of default and opposing the motion to set aside the default. This can be confirmed by dividing the ***Total Billed Amount*** in the invoice to Kiva by the number of hours, i.e., $\$11,109 \div 16.1 = \690 .

8. In addition to my time, the invoice and billing statements to Kiva included 3.2 hours of time spent by our co-counsel, Jennifer Rynell of Wilson Legal Group. Ms. Rynell’s hourly rate for this matter, and the rate at which MSI has been invoiced and has paid is \$395. I do not know if Kiva objects to this rate,

but I have been informed by Ms. Rynell that \$395 an hour for Ms. Rynell, who also focuses on intellectual property litigation and has been practicing for 21 years, is reasonable and, in fact, lower than most of her contemporaries in the Dallas area.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on March 13, 2023 at Irvine, California.

/s/ Ronald P. Oines

Ronald P. Oines

EXHIBIT 1

February 16, 2023

By Email

tchiacchio@chiacchioip.com

Theodore J. Chiacchio
CHIACCHIO IP, LLC
307 N. Michigan Ave., Ste. 2011
Chicago, IL 60601

Re: *M S International, Inc. v. Kiva Stone LLC*
USDC Case No. 3:22-cv-001296

Dear Mr. Chiacchio:

As you know, the Court's February 10, 2023 Order requires defendant "to pay MSI's reasonable attorney's fees incurred in obtaining the Entry of Default and responding to Kiva's Motion to set aside the default."

Attached hereto is an invoice for attorneys' fees incurred by MSI in obtaining the Entry of Default and responding to Kiva's Motion to set aside the Default, as well as an affidavit and detailed billing statements.

Pursuant to the Court's Order, please have Kiva pay these fees no later than March 12, 2023.

Very truly yours,

RUTAN & TUCKER, LLP



Ronald P. Oines

RPO:cs
Enclosures

c: Xerxes Martin, IV (xmartin@mamlaw.com)

A PARTNERSHIP INCLUDING PROFESSIONAL CORPORATIONS

18575 JAMBOREE ROAD, 9TH FLOOR
IRVINE, CALIFORNIA 92612-2559
(714) 641-5100

Kiva Stone LLC
c/o Theodore J. Chiacchio
Chiacchio IP, LLC
307 N. Michigan Ave., Ste. 2011
Chicago, IL 60601

Date: February 16, 2023

INVOICE

CURRENT INVOICE SUMMARY:

Professional Fees
Fees Due This Invoice

\$	12,847.00
\$	12,847.00

ACH/Wire Instructions

Union Bank, N.A.
18300 Von Karman
Irvine, CA 92612
ABA #: [REDACTED]
Swift Code: [REDACTED]
Account Number: [REDACTED]
Account Name: Rutan & Tucker LLP
Reference: Please refer to the invoice number listed above.

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

M S INTERNATIONAL, INC., an
Indiana corporation,

Plaintiff,

vs.

KIVA STONE LLC, an Illinois
Limited Liability Company; and DOES
1 through 10, inclusive,

Defendant.

Case No.: 3:22-cv-01296-S

AFFIDAVIT OF RONALD OINES

I, Ronald Oines, declare as follows:

1. I am a partner of Rutan & Tucker LLP and one of the attorneys of record for Plaintiff M S International, Inc. (“MSI”) in this suit. I am a member in good standing of the State Bar of California and am admitted *pro hac vice* to this Court. I have personal knowledge of the facts set forth in this Affidavit and, if called as a witness, could and would testify competently to such facts under oath.

2. On February 10, 2023, the Court entered its “Order Setting Aside Clerk’s Entry of Default, Awarding Attorneys’ Fees [etc.]” (the “Order”) [ECF No. 24]. In the Order, the Court awarded attorneys’ fees in favor of MSI. In particular,

the Court ordered “Kiva to pay MSI the *reasonable* attorneys’ fees it incurred in seeking the Entry of Default and in responding to Kiva’s Motion to Set Aside Default.” (Order, pg. 11.) The Court ordered MSI to provide Kiva with “an invoice setting forth the amount of fees incurred, supported by an appropriate affidavit and detailed billing statement”

3. I have reviewed the time entries from the invoices from my firm, Rutan & Tucker, LLP and our co-counsel Wilson Whitaker Rynell that have been submitted to MSI in this case. The amounts shown in the billing statements and invoice are amounts actually billed to MSI and paid.

4. Attached as **Exhibit 1** are time entries from Rutan & Tucker, LLP’s invoices to MSI that reflect time and billings for fees incurred in seeking Entry of Default and responding to Kiva’s Motion to Set Aside Default. For any daily entries that also included descriptions and time for matters not directly related to seeking Entry of Default or responding to Kiva’s Motion to Set Aside Default, we removed such descriptions and time from the billings.

5. Attached as **Exhibit 2** are time entries from Wilson Whitaker Rynell’s invoices to MSI that reflect time and billings for fees incurred in seeking Entry of Default and responding to Kiva’s Motion to Set Aside Default.

6. As is shown in Exhibits 1 and 2, the total of fees incurred by MSI in seeking Entry of Default and responding to Kiva's Motion to Set Aside Default is \$12,847.00.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed on February 16, 2023 at Irvine, California.

/s/ Ronald P. Oines

Ronald P. Oines

EXHIBIT 1

Date	TKPR Name	Client	Matter	Bill Num	Bill Date	Billed Amt	Bl Hrs	Narrative
7/19/2022	Oines, Ronald	101660	297	935384	8/4/2022	\$828.00	1.2	Prepare Request for Entry of Clerk's Default; review docket for support and requirements for same.
7/20/2022	Oines, Ronald	101660	297	935384	8/4/2022	\$966.00	1.4	Review docket for status and Court's requirements for default proceedings; emails regarding same and manner of proceeding; continue preparing Request for Entry of Default, Declaration in support thereof, and proposed order entering default.
7/21/2022	Oines, Ronald	101660	297	935384	8/4/2022	\$1,794.00	1.3	Finalize request for entry of default and supporting papers; emails regarding same and manner of proceeding
8/22/2022	Oines, Ronald	101660	297	937895	9/8/2022	\$1,242.00	1.8	Prepare Opposition to Motion to set aside default and to quash subpoenas; review additional pertinent case law.
8/23/2022	Oines, Ronald	101660	297	937895	9/8/2022	\$3,036.00	4.4	Continue preparing Opposition to motion to set aside entry of default and to quash subpoenas; review facts and law relating to enforcement of subpoenas and purported grounds for quashing same.
8/24/2022	Oines, Ronald	101660	297	937895	9/8/2022	\$552.00	0.5	Emails regarding strategies for opposition to motion to set aside default and motion to quash; prepare same; prepare declaration in support of opposition
8/26/2022	Oines, Ronald	101660	297	937895	9/8/2022	\$2,001.00	2.9	Prepare Declaration and other evidence in support of opposition to motion to set aside default and to quash subpoenas; revise opposition; emails regarding same and manner of proceeding.
8/29/2022	Oines, Ronald	101660	297	937895	9/8/2022	\$966.00	1.4	Emails regarding opposition papers and manner of proceeding; review Kiva Stone current website; emails regarding investigation and screen capture of same; final revisions to opposition and supporting evidence.
9/14/2022	Oines, Ronald	101660	297	940892	10/6/2022	\$828.00	1.2	Review and analyze Kiva's Reply Brief in support of motion to set aside Default and Quash Subpoenas and certain cases cited therein; emails regarding same and strategies.
Total:						\$11,109.00	16.10	

EXHIBIT 2

Wilson Legal Group P.C.

16610 Dallas Parkway, Suite 1000
Dallas, Texas 75248
Phone No.: (972) 248-8080
Fax: (972) 248-8088
Federal Tax ID: 52-2392426

Statement as of 7/31/2022
Statement no 26365

Rutan & Tucker, LLP
Ronald P. Oines
18575 Jamboree Rd.
9th Floor
Irvine, CA 72612

22-002834-01 / Local Counsel - MSI v. Kiva Stone

Professional Services		Hours	Rate	Amount
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED] [REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
07/21/2022 JMR	REVIEWED DEFAULT PAPERS FOR FILING AND PREPARED REVISIONS TO SAME. REVIEWED LOCAL RULE RE ELECTRONIC SIGNATURES. CORRESPONDED WITH CO-COUNSEL RE MOTION PAPERS. CONFERRED WITH J. WILSON AND L. WHITAKER RE SAME. FINALIZED AND FILED SAME	1.20	395.00	474.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sub-total Fees:				[REDACTED]

Expenses

Units

Price

Amount

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sub-total Expenses:			[REDACTED]

Trust Account

Beginning Balance: [REDACTED]

Ending Balance: [REDACTED]

Rate Summary

[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Total hours:	[REDACTED]	[REDACTED]

Total Current Billing: [REDACTED]

Total Payments: [REDACTED]

Wilson Legal Group P.C.

16610 Dallas Parkway, Suite 1000
Dallas, Texas 75248
Phone No.: (972) 248-8080
Fax: (972) 248-8088
Federal Tax ID: 52-2392426

Statement as of 8/31/2022
Statement no 26461

Rutan & Tucker, LLP
Ronald P. Oines
18575 Jamboree Rd.
9th Floor
Irvine, CA 72612

22-002834-01 / Local Counsel - MSI v. Kiva Stone

Professional Services		Hours	Rate	Amount
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
08/19/2022 JMR	PARTICIPATED IN CALL WITH OPPOSING COUNSEL REGARDING MOTION TO SET ASIDE DEFAULT JUDGMENT AND MOTION TO QUASH SUBPOENAS. REVIEWED CORRESPONDENCE RE SAME. CORRESPONDED WITH CO- COUNSEL RE SAME AND DEADLINES FOR RESPONSES AND REPLIES. CONFERRED WITH ASSISTANT RE.CALENDARING MOTION DEADLINES	0.70	395.00	276.50

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
08/24/2022 JMR	REVIEWED BRIEFING ON MOTION TO SET ASIDE DEFAULT AND MOTION TO QUASH FILED BY OPPOSING PARTY. PREPARED NOTES RE SAME. CORRESPONDED WITH CO-COUNSEL RE SAME. CONFERRED WITH J. WILSON RE SAME	0.50	395.00	197.50
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
08/29/2022 JMR	REVIEWED OPPOSITION TO MOTIONS, DECLARATION AND EXHIBITS. CORRESPONDED WITH CO-COUNSEL RE CHANGE TO SAME	0.40	395.00	158.00
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]

Sub-total Fees:

Units

Price

Amount

Sub-total Expenses:

Trust Account

Beginning Balance:

Ending Balance:

Total hours:

Total Current Billing:

Total Payments:

Amount to Replenish Retainer:

Total Balance Due:

Rutan & Tucker, LLP
Ronald P. Oines
18575 Jamboree Rd.
9th Floor
Irvine, CA 72612

Professional Services		Hours	Rate	Amount
09/13/2022	JMR REVIEWED DEADLINE AND CORRESPONDED WITH CO- COUNSEL RE SAME AND STRATEGY RE SURREPLY. CONDUCTED INITIAL REVIEW OF REPLY BY KIVA,	0.70	395.00	276.50
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
09/14/2022	JMR CONTINUED REVIEWING REPLY AND EXHIBITS FILED BY KIVA. CORRESPONDED WITH CO- COUNSEL RE SAME. CONFERRED WITH J. WILSON AND ASSISTANT RE SAME	0.90	395.00	355.50
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			
[REDACTED]	[REDACTED]			

[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sub-total Fees:		[REDACTED]	[REDACTED]

Expenses	Units	Price	Amount
[REDACTED]	[REDACTED]	[REDACTED]	[REDACTED]
Sub-total Expenses:			[REDACTED]

Trust Account	Beginning Balance:	[REDACTED]
	Ending Balance:	[REDACTED]

Rate Summary		
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
[REDACTED]	[REDACTED]	[REDACTED]
Total hours:	[REDACTED]	[REDACTED]

Total Current Billing:	[REDACTED]
Total Payments:	[REDACTED]
Amount to Replenish Retainer:	[REDACTED]
Total Balance Due:	[REDACTED]